

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

DAMEION TUNSTALL,

Petitioner,

v.

Civil Action No. 2:08cv98

KUMA J. DeBOO,

Respondent.

ORDER

It will be recalled that on May 7, 2009, Magistrate Judge John S. Kaull filed his Report and Recommendation, wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. No objections to the Magistrate Judge's Report and Recommendation have been filed. The Court notes that on June 1, 2009, the Report and Recommendation was returned as undeliverable. The Court further notes that the Petitioner has an ongoing obligation to keep the Court apprised of his current mailing address. Accordingly, the Court will proceed with consideration of the Report and Recommendation as being without objection, thus reviewing for clear error.¹

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Petitioner's Application for Habeas Corpus, filed pursuant to 28 U.S.C. §2241, and the Respondent's Motion to Dismiss or For Summary Judgment, were thoroughly considered by Magistrate Judge Kaull in his Report and

¹The failure of a party to object to a Report and Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

Recommendation. Moreover, the Court, upon a review for clear error, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

ORDERED that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that Respondent's Motion to Dismiss or in the Alternative For Summary Judgment (docket #14) shall be, and the same hereby is, **GRANTED**. It is further

ORDERED that the Petitioner's §2241 petition shall be, and the same hereby is, **DENIED and DISMISSED WITH PREJUDICE**. It is further

ORDERED that the Clerk shall enter judgment for the Respondent. It is further

ORDERED that the above-styled action shall be **STRICKEN** from the docket of this Court. It is further

ORDERED that, if a party should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

ENTER: June 23rd, 2009

/s/ Robert E. Maxwell
United States District Judge